

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA §
 §
VS. § CRIMINAL ACTION NO. 2:14-CR-00601-1
 §
MARIA GUADALUPE OSORIO GARCIA §

FINDINGS AND RECOMMENDATION
ON PLEA OF GUILTY

United States District Judge Marina Garcia Marmolejo referred this case to the undersigned United States Magistrate Judge for the purpose of conducting a guilty plea proceeding pursuant to Rule 11 of the Federal Rules of Criminal Procedure.¹ The undersigned submits these Findings and Recommendation to the District Judge pursuant to 28 U.S.C. § 636(b)(3). All parties have waived the right to plead before a United States District Judge, and additionally, have consented to proceed before the undersigned.

On September 29, 2014, the Defendant appeared with counsel before the undersigned magistrate judge and was personally addressed in open court and admonished pursuant to Rule 11 of the Federal Rules of Criminal Procedure as follows:

1. The Defendant was placed under oath and advised that any false answers given during the plea proceeding could be used by the United States against the Defendant in a prosecution for perjury or for making a false statement;

2. The defendant was advised of the defendant's right to a jury trial, the right to the presumption of innocence, the right to require that the United States prove each of the elements of the offense to a jury beyond a reasonable doubt. The defendant was further advised that the right to a jury trial included the right to see, hear and cross-examine witnesses, the right to compel witnesses to appear on the defendant's behalf, and the right to testify on the defendant's behalf or to remain silent. The defendant was advised that a plea of guilty would waive the right to a jury trial, the right to see, hear and cross examine witnesses, the right to compel witnesses to appear in the defendant's behalf, and the right to remain silent;

¹ See Special Order C-2014-02.

3. The Defendant was advised that Count One of the Indictment charged a violation of Title 18, United States Code, Section 1546(a) which makes it unlawful for any person to knowingly possess and use a fraudulent or counterfeit United States Visa for entry into or as evidence of authorized stay or employment in the United States;

4. The Defendant was advised that the United States must prove each of the following elements of the offense beyond a reasonable doubt: (1) that the Defendant used, presented, or possessed a document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States; and (2) that the Defendant did so knowing that the said document was forged, counterfeited, altered, or falsely made;

5. The Defendant was advised that the maximum possible sentence included a prison term of up to ten years plus a maximum fine of up to \$250,000, and a period of supervised release of not more than three years, and that any violation of supervised release could result in an additional prison term of up to a maximum of two years; the Defendant also was advised that even if the Defendant received the maximum two year sentence for violation of supervised release, if the Defendant had not completed the full term of supervised release, the Defendant could be re-released to supervised release, and if revoked again could receive up to a two year sentence again; the Defendant was advised that this could happen multiple times until completing the term of supervised release; the Defendant also was advised that a mandatory \$100 special assessment applied to this felony conviction;

6. The Defendant was advised of the District Court's obligation to calculate the applicable advisory sentencing guideline range and to consider that advisory range, possible departures and variances under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); the Defendant stated that she understood and had discussed with her attorney how the guidelines might be calculated in her case and applied to her; and

7. The Defendant was advised that if convicted of this offense, she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. The Defendant stated she understood and had discussed this matter with her attorney; and

8. The Defendant was advised that there was no plea agreement with the United States; upon further questioning, the Defendant stated that the United States offered a plea agreement and it was rejected after defense counsel reviewed and explained the offer of a plea agreement to the Defendant.

The Defendant stated that she had received a copy of the Indictment and she understood the nature of the charge, the maximum possible penalty, and the consequences of pleading guilty. The Defendant further stated that the plea of guilty was made freely and

voluntarily, and did not result from any force, threats or coercion, and no one had promised the Defendant a certain sentence. The Defendant stated that she understood that if she did not receive the sentence hoped for, she could not withdraw her plea of guilty. The undersigned finds the Defendant to be sufficiently competent to enter a plea of guilty.


The Defendant pleaded guilty to the offense of knowingly possessing and using a fraudulent or counterfeit United States Visa for entry or stay in the United States in violation of 18 U.S.C. § 1546(a) as alleged in Count One of the Indictment. When questioned about the guilty plea the Defendant admitted that on or about the date in the Indictment, the Defendant had used and possessed a document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, that is the United States Visa described in the Indictment, and that the Defendant that when she did so, the Defendant knew that the document was forged, counterfeited, altered, or falsely made. The Defendant admitted that the factual basis in support of the guilty plea, as set forth by the United States Attorney, was correct.

The undersigned United States Magistrate Judge finds that Defendant's guilty plea was freely and voluntarily tendered and did not result from force, threats, or promises and that an adequate factual basis exists in relation to this plea.

RECOMMENDATION

It is respectfully recommended that the District Court adopt the foregoing findings, accept the Defendant's plea of guilty, and enter a finding that the Defendant is guilty as charged in Count One of the Indictment.

Respectfully submitted this 29th day of September, 2014.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file the Findings and Recommendation on Plea of Guilty and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Crim. P. 59(b), 28 U.S.C. § 636(b)(1), and General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).